



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,783	04/02/2004	Nicolaas Van Der Plas	03910/0201067-US0	9960
7278	7590	02/06/2007		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER COOLEY, CHARLES E	
			ART UNIT 1723	PAPER NUMBER
			MAIL DATE 02/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/816,783	Applicant(s) VAN DER PLAS, NICOLAAS	
	Examiner Charles E. Cooley	Art Unit 1723	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): The 112, 2nd rejections of claims 4, 7, 10-13, and 15.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: NONE.
 Claim(s) objected to: 4,5,12,13,18 and 19.
 Claim(s) rejected: 2,3,6-9,11,14-17 and new claim 20.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached letter.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____


 Charles E. Cooley
 Primary Examiner
 Art Unit: 1723

ADVISORY ACTION

Remarks

- The replacement drawing sheets filed 16 JAN 2007 are approved.
- It is unclear where the support for unamended claim 18 exists in the specification (see section 7(a) of the previous office action). This objection should be addressed before appeal.
- Claim 3, line 2 as amended is worded in an awkward and unclear manner - "said rotation and axis"? This issue should be addressed before appeal.
- Claims 17 and 19 introduce new issues but will be entered upon appeal since Chupka shows this subject matter at least by the circumferential and downwardly extending surface labeled 36B in Figure 5. Any surface (including area 36B) of the Chupka rotating assembly 40 is quite capable of deflecting substances within the chamber. The examiner's answer will reject claim 17 and address the new limitations therein necessitated by amendment.
- New claim 20 is the same subject matter as previously rejected claim 16 and will stand rejected in the examiner's answer as necessitated by amendment.
- Applicant remarks "[c]laim 15 is the main claim of the application and is proposed to be amended to recite that the leading take up edge of the flight is adjacent to the bottom of the mixer chamber." However, no such language appears in claim 15, as amended. The examiner thus will not comment on this subject matter.
- Applicant places much emphasis on the "leading take up edge" of the flight. However, such a recitation is only relevant if the claims are drafted to mandate

such an interpretation by reciting particular drive means/gearing and direction of rotation, right-handed vs. left-handed screw, etc. which are not issues contemplated by the pending claims. Chupka clearly has a flight that has two terminal edges. Applicant states the leading edge of the flight is near the top of the screw, but again this is just because of the direction of rotation "A" of the Chupka device. If the device were rotated in the direction counter to direction "A", the terminal edge proximate 54, 54A, or 54B can be construed as the leading take up edge. Applicant argues that the "mixing screw of Chupka is designed and rotated for a downwardly directed operation effect of the material. . . In accordance with the present application the mixing screw moves the matter upwardly." Applicant also remarks "Chupka and the subject invention are directed to accomplish different functions". The direction of rotation of the device of Chupka and the so-called different functions (the examiner wonders what novel or unobvious structure said functions add to the pending apparatus claims) are but intended uses of the structure that meets the subject matter of the rejected claims. Such an intended use has not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641. Since Chupka shows all of the claimed subject matter of the mixing

Art Unit: 1723

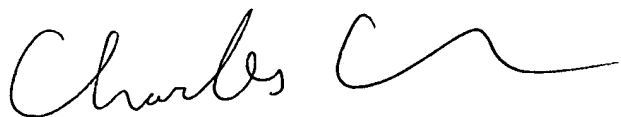
screw and guide plates, the direction of rotation (and thus the leading edge vs. trailing edge controversy) is immaterial to the patentability of the claimed apparatus.

- Applicant then asserts “[c]ombining Chupka with Blakely is illogical” and [I]t would make no sense to place a discharge opening in the vertical wall of Chupka's chamber.” However, this conclusion is premature as Applicant ignores possible motivations such as to enable rapid dumping of the contents of the chamber rather than slower discharge through the small holes in plate 18 when desired such as during a chamber cleaning or device testing operation. The mixing art is replete with vessel, tanks, receptacles, and chambers with discharge openings in a wall thereof to enable discharge of the material. Since providing a mixing chamber with a discharge opening is such a prima facie obvious proposition, the examiner cannot foresee allowing any claim solely for this reason.
- The amendment will be entered for purposes of appeal pursuant to Applicant's request.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Charles C", with a stylized flourish at the end.

Charles E. Cooley
Primary Examiner
Art Unit 1723

1 February 2007